

ARKANSAS SUPREME COURT

No. CR 06-30

NOT DESIGNATED FOR PUBLICATION

LAVERNE OTIS REED
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered September 28, 2006

PRO SE APPEAL FROM THE CIRCUIT
COURT OF MISSISSIPPI COUNTY,
CHICKASAWBA DISTRICT, CR 2004-
150, HON. JOHN NELSON
FOGLEMAN, JUDGE

AFFIRMED

PER CURIAM

A judgment and commitment order entered July 28, 2005, indicates appellant Laverne Otis Reed entered a negotiated plea of guilty to robbery and was sentenced to 240 months' imprisonment in the Arkansas Department of Correction. Appellant timely filed a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1, which was denied by an order signed on November 3, 2005, and entered November 7, 2005. Appellant now brings this appeal. In his notice of appeal, he identified the order appealed as issued on November 3, 2005, and indicated that he also wished to appeal another order denying a motion on the same date. No other order with that date appears in the record, and, as the State notes in its brief, appellant only presents arguments concerning the order denying his petition.

Appellant divides his argument into five sections, arguing that (1) he was entitled to a hearing because he challenged the evidence and argued actual innocence; (2) that his conviction was invalid due to a speedy-trial violation; (3) the trial court erred in failing to find trial counsel was ineffective;

(4) he was denied a fair trial because the trial court held his confession was admissible and his attorney threatened to expose privileged information if appellant did not plead guilty; (5) the trial court erred in holding his confession was admissible because he claimed he had been promised that the charges would be dropped in return for his cooperation with the sheriff's office. The trial court found that appellant had failed to allege any factual basis to support a finding of prejudice.

This court does not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

Appellant first contends that he should have been provided a hearing on his petition. An evidentiary hearing should be held in a postconviction proceeding unless the files and the records of the case conclusively show that the prisoner is entitled to no relief. *Sanders v. State*, 352 Ark. 16, 98 S.W.3d 35 (2003). Appellant contends that his petition was meritorious because he alleged his actual innocence and challenged the sufficiency of the evidence. Appellant does not appear to contest the facts as recited by appellant during his plea hearing. He appears only to dispute that those actions were sufficient to convict him on the charge. But, allegations of actual innocence, and other challenges to sufficiency of the evidence, are direct attacks on the verdict and not claims cognizable in a Rule 37.1 proceeding. We do not permit an appellant to rechallenge the sufficiency of the evidence at trial in a postconviction proceeding. *Johnson v. State*, 321 Ark. 117, 900 S.W.2d 940 (1995).

Nor is there merit to appellant's claim of relief based upon a speedy trial violation. Appellant

waived his right to a speedy trial when he entered his guilty plea. *Hall v. State*, 281 Ark. 282, 663 S.W.2d 926 (1984). He does not argue that counsel was ineffective for failing to raise this issue. In fact, his argument was based upon a claim that the delay resulted because counsel requested continuances to which appellant did not acquiesce. Clearly appellant was not entitled to relief on this issue.

Appellant next claims ineffective assistance of counsel. In an appeal from a trial court's denial of postconviction relief on a claim of ineffective assistance of counsel, the question presented is whether, based on the totality of the evidence, the trial court clearly erred in holding that counsel's performance was not ineffective under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Jackson v. State*, 352 Ark. 359, 105 S.W.3d 352 (2003). Under the criteria for assessing the effectiveness of counsel as set out in *Strickland*, when a convicted defendant complains of ineffective assistance of counsel, he must show first that counsel's performance was deficient through a showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the petitioner by the Sixth Amendment. Additionally, the petitioner must show that the deficient performance prejudiced the defense, which requires a showing that counsel's errors were so serious as to deprive the petitioner of a fair trial. *Andrews v. State*, 344 Ark. 606, 42 S.W.3d 484 (2001) (*per curiam*).

There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Noel v. State*, 342 Ark. 35, 26 S.W.3d 123 (2000). To rebut this presumption, the petitioner must show that there is a reasonable probability that, but for counsel's errors, the factfinder would have had a reasonable doubt respecting guilt, *i.e.*, that the decision reached would have been different absent the errors. A reasonable probability is one that is sufficient

to undermine confidence in the outcome of the trial. *Greene*, 356 Ark. at 64, 146 S.W.3d at 876. Because of this standard, the burden is on the petitioner to provide facts to support his claims of prejudice. *Nelson v. State*, 344 Ark. 407, 39 S.W.3d 791 (2001) (*per curiam*). Allegations without factual substantiation are insufficient to overcome the presumption that counsel is effective. *Id.* at 413, 39 S.W.3d at 795. Conclusory statements cannot be the basis of postconviction relief. *Jackson v. State*, 352 Ark.359, 105 S.W.3d 352 (2003). Where a case involves an allegation of ineffectiveness in relation to a guilty plea, the appropriate standard of prejudice is whether, but for counsel's errors, there is a reasonable probability that the defendant would not have entered a guilty plea and thereby waived his right to a trial. *Jones v. State*, 355 Ark. 316, 136 S.W.3d 774 (2003).

As the State points out in its brief, appellant presents only a claim on this point that appears to have no reference to the facts of his case, and that, we note, was not raised below. Otherwise, appellant states only the standard of review, without attempting to argue the facts of his case, or indicate what factual basis was shown to support a finding of prejudice, or otherwise show any error by the trial court. We do not research or develop arguments for appellants. *Hester v. State*, ___ Ark. ___, ___ S.W.3d ___ (May 19, 2005).

Appellant's last two points both assert that he was denied a fair trial or is otherwise entitled to relief because his confession was held admissible by the trial court. His fourth point also asserts that his attorney threatened to disclose privileged information. He presents those arguments as freestanding constitutional claims, rather than asserting ineffective assistance of counsel. The claims fail, in any case, as appellant did not support his arguments with more than conclusory allegations or meet his burden to provide a showing that he would not have entered a guilty plea even had the alleged errors not occurred.

Appellant did not allege that his confession was crucial to the State's case, or that, had the confession been held inadmissible, he would not have entered a guilty plea. Nor did appellant provide any information as to what privileged information was to have been disclosed or the circumstances under which counsel allegedly made the statement that he would disclose that information if appellant did not plead guilty. Without the establishment of any additional factual basis in appellant's Rule 37.1 petition, we cannot say the trial court was clearly erroneous for determining that appellant failed to make a showing of error or prejudice. Accordingly, we affirm the denial of postconviction relief.

Affirmed.